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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Special Committee decision of 15 June 2009 concerning Puerto Rico*

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* This document was submitted on 22 April 2010 to allow for inclusion of up-to-date information.

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I. Introduction

1. At its 6th meeting, on 15 June 2009, the Special Committee adopted draft resolution A/AC.109/2009/L.7 on the question of the Special Committee decision of 9 June 2008 concerning Puerto Rico. In paragraph 11 of the resolution, the Special Committee requested the Rapporteur to submit a report in 2010 on the implementation of the resolution. The present report was prepared by the Rapporteur of the Special Committee in compliance with that request. It considers Puerto Rico in the light of previous reports prepared by the Rapporteur, recent political and military developments in Puerto Rico and action taken by United Nations bodies on the matter.

II. Background information

A. General

2. Puerto Rico is the most easterly and smallest island of the Greater Antilles, in the Caribbean Sea. It has a land area of 8,959 square kilometres, including the small nearby islands of Vieques, Culebra and Mona. More than three fourths of Puerto Rico is mountainous and the range that runs its length reaches an elevation of 1,338 metres at its highest point.

3. As at July 2009, the population was estimated to be 3,971,020,[1] primarily Spanish speaking, although a certain number of Puerto Ricans also speak English. According to United States census estimates, Puerto Rico's rate of population growth averaged 0.7 per cent over the years from 2000 to 2005; in 2009 the estimated population growth rate was just under 0.3 per cent. According to United States Census Bureau information, 359,585 Puerto Ricans settled in the continental United States between 2000 and 2007; during the 1980s that figure was approximately 491,000, and between 1950 and 1960 it was 447,000.

4. As previously reported, over the past four decades, the island's demography has been transformed from that of a traditional agrarian society into that of an industrial society, with population growth slowing and life expectancy rising sharply. Part of the slowdown in population growth has been the result of emigration of some 500,000 Puerto Ricans to the United States of America, in particular during the 1950s and 1960s.

5. United States citizenship is granted to people born in Puerto Rico. They do not have the right to vote in United States presidential or congressional elections unless they reside on the United States mainland. In addition, the Supreme Court of Puerto Rico has recognized the existence of Puerto Rican citizenship in a court decision. Subsequently, the Puerto Rican Department of State certified such citizenship, which Puerto Ricans may claim through a protocol established by the Puerto Rican Department of State. Under the current Commonwealth arrangements, authority over defence, international relations, external trade and monetary matters remains with the United States, while Puerto Rico has autonomy on tax matters, social policies and most local affairs.

[1] CIA Factbook. Available from www.cia.gov/cia/publications/factbook; see Puerto Rico.

6. As previously reported, the main political parties in the Territory differentiate themselves mostly by their position on the ultimate political status of Puerto Rico, none being satisfied with the status quo. The Partido Popular Democrático (PPD) favours an enhanced Commonwealth status, non-territorial and non-colonial. United States citizenship would be retained but Puerto Rico would have greater governmental authority over its own affairs and more latitude to establish regional and international relations. The Partido Nuevo Progresista (PNP) favours Puerto Rico becoming a fully integrated state of the United States. Support for PPD remains slightly higher than for PNP. The third party, the Partido Independentista Puertorriqueño (PIP), favours independence for the island. There are pro-independence groups and organizations that do not participate in the elections because they consider that elections within a colonial context do not represent a true democratic exercise, while some cast strategic votes in favour of the PPD candidate for governor, in order to prevent the ascension to power of statehood supporters.

B. Constitutional and political status

7. Puerto Rico currently holds commonwealth status with the United States. The 1952 Constitution of the Commonwealth of Puerto Rico is described in detail in paragraphs 91 to 119 of the Rapporteur's report of 1974 (A/AC.109/L.976). In brief, the Government consists of: (a) a Governor elected for four years at each general election; (b) a Legislative Assembly comprising two houses, the Senate (27 members) and the House of Representatives (51 members) elected by direct vote of the adult population at each general election; and (c) a Supreme Court and lower courts. The United States Federal Court extends its jurisdiction to Puerto Rico. Puerto Rico is represented in the United States Government by a Resident Commissioner, who is a non-voting member of the United States House of Representatives, but a voting member of any committees on which he or she sits.

8. There are two judicial systems: Puerto Rico's courts and the United States District Court for the District of Puerto Rico. The United States District Court for the District of Puerto Rico functions in Puerto Rico with limited jurisdiction and can be reached only for cases under United States federal law or cases where there is diversity of State citizenship, that is, when a citizen of one State sues a citizen from another State. Cases before Puerto Rico's Supreme Court involving federal law can be appealed to the United States Supreme Court. Appeals to the First Circuit are taken from the United States District Court for the District of Puerto Rico, which is a first instance court.

9. Even after the establishment of a constitutional Government for Puerto Rico in 1952, United States congressional authority over Puerto Rico remained unaltered. The United States Congress is vested with plenary power over Puerto Rico, while the island is vested with local authority over designated areas. All laws concerning the Territory's relations with the United States remained in force through the Federal Relations Act (see A/AC.109/L.976, paras. 120-132), under which Puerto Rico was brought within the trade, tariff and monetary systems of the United States. The United States also undertook responsibility for the defence of Puerto Rico. In 1958, Puerto Rico's Legislative Assembly requested changes in the Federal Relations Act, but these were not enacted. In 1959 three bills requesting changes in the political status of the Territory were submitted to the United States Congress, but no action was taken on any of them.

10. The results of a 1993 plebiscite, with virtually identical options to those offered in a previous plebiscite in 1967, were 48.4 per cent for the status quo (Commonwealth), 46.2 per cent for statehood and 4 per cent for independence. Following this result, and a request for clarification by the Legislative Assembly of Puerto Rico, Congress replied that the definition contained expectations that were not viable (see A/AC.109/1999/L.13, paras. 172-180). The Puerto Rican Legislative Assembly then voted to hold another plebiscite in 1998. In February 1997, the Young Bill was introduced in the United States Congress, seeking to make the results of the proposed 1998 plebiscite binding on the United States Government.

11. The organization of the 1998 plebiscite proceeded as scheduled, despite the failure of Congress to bind the United States Government to the results. There was, however, much controversy regarding the wording of the ballot choices. The results of the plebiscite held on 13 December 1998 were as follows: 50.4 per cent for "None of the above", an option included by means of court action pursued by PPD; 46.7 per cent for statehood; 2.3 per cent for independence; 0.3 per cent for free association; and 0.06 per cent for Commonwealth. In the plebiscite, independence supporters divided themselves by also casting votes with the "None of the above" option, in an act of repudiation of what was considered an undemocratic exercise.

12. After the 1998 plebiscite, the then President of the United States, William J. Clinton established the President's Task Force on Puerto Rico's Status. On 5 December 2003, then President George W. Bush named the 16 members of his Task Force, at the same time amending President Clinton's executive order so that the Task Force was required to report on the progress made every two years instead of annually. Leaders of both the pro-Commonwealth PPD and the pro-independence PIP have said that the move did not indicate any serious intention on the part of President Bush to take action on the political status of Puerto Rico in the near future, while the pro-statehood PNP welcomed the announcement as a sign that Washington, D.C., was interested in dealing with the issue after the Puerto Rico and United States elections in November 2004.

13. The press in Puerto Rico widely reported that on 2 January 2009, then President-elect of the United States Barack Obama sent a message to the swearing-in ceremony of the new Governor of Puerto Rico, Luis Fortuño, reiterating that he would try to resolve the colonial case of Puerto Rico during his first term.

14. The President's Task Force on Puerto Rico's Status, as constituted under the administration of President Obama, held its first meeting on 15 December 2009, expanding its focus to include matters affecting Puerto Rico's economic development. President Obama signed an Executive Order on 30 October 2009 that preserved the Task Force's original mission and required it to provide advice and recommendations to the President and Congress on policies that promote job creation, education, health care, clean energy and economic development on the islands. The Task Force comprises designees of each member of the President's Cabinet and the Co-Chairs of the President's Interagency Group on Puerto Rico.

15. On 3 March 2010, the Task Force held hearings in San Juan. Sixteen of the eighteen members of the Task Force, including Co-Chairs Thomas Perrelli, Associate Attorney General of the United States, and Cecilia Muñoz, Director of Intergovernmental Affairs at the White House, were present during the hearings. Media coverage following the hearings reported strong criticism of and a cool reception towards the event. Many in the political spectrum downplayed the

hearings, saying that it was time for action, not reports. In addition to the question of political status, the Task Force had decided to hear testimony on social issues but they did not hear the testimony of any elected officials of Puerto Rico's political parties; instead, they heard an environmentalist, a health expert and four members of the island's political parties. Testimony reflected a consensus that the Task Force must first address the issue of Puerto Rico's status. Many speakers, including two renowned Puerto Rican economists, affirmed that Puerto Rico suffers a structural problem that tends towards unemployment and affects sustainable economic development.[2]

16. The possibility of the Constitutional Assembly serving as a mechanism for deciding Puerto Rico's future political status was also broadly discussed during the hearings. PNP stated its position, as reflected in a resolution pushed through in the Senate, rejecting the extension of the status quo through further hearings, and demanding a recommendation from the Task Force to bring about an immediate process for solving the political status. A PDP representative said in his testimony that the Task Force should examine the option of convoking a Constitutional Status Assembly. In a written statement submitted to the Task Force during the hearings, elected officials of the autonomist wing of PDP reaffirmed their support for recognition of the sovereignty of the Puerto Rican people and a Constitutional Assembly as stated in the party programme. A representative of PIP who participated in the hearings objected to changes in the agenda of the Task Force, arguing that it was contradictory to speak of economic development under the colonial model.

17. Pro-decolonization, sovereignty and independence organizations excluded from the official hearings held their own hearings in the vicinity, where spokespersons claimed recognition of the sovereignty of the Puerto Rican people as a nation with the right to self-determination, and stated that the Task Force must recognize the colonial problem.[3] The Puerto Rico Bar Association reiterated its historical institutional positions in favour of the exercise of the inalienable right of the Puerto Rican people to self-determination in conformity with international law, and the responsibility of the United States Government in the matter, as reaffirmed in Resolution 13 adopted by its Governing Board on 27 February 2010.

18. As previously reported, in March 2005, after a proposal by then Governor Aníbal Acevedo Vilá for a referendum to be held in July that year, the Puerto Rican Senate approved a bill that authorized the referendum and included a constitutional assembly on status as a possible way to resolve the political relationship between the United States and Puerto Rico. The bill included an amendment that would oblige the Puerto Rican House and Senate to pass legislation that would allow the people of Puerto Rico to choose a mechanism to determine status, in case the United States Government did not commit to a process of free determination by 31 December 2006. However, Governor Acevedo Vilá felt that the language of the bill was not strong enough on the option of the constitutional assembly and he vetoed the bill on 10 April.

19. In its December 2005 report, the President's Task Force on Puerto Rico's Status stated that, while the current territorial status might continue so long as

[2] *El Nuevo Día*, 4 March 2010.

[3] *Primera Hora*, *El Vocero* and *El Nuevo Día*, 2, 3 and 4 March 2010.

Congress desired, there were only two non-territorial options recognized by the United States Constitution, namely, statehood within the United States or full independence. The Task Force envisaged a two-stage process to approach the issue. It first recommended that a "federally sanctioned plebiscite" take place in 2006 to ascertain whether the people of Puerto Rico "wish to remain a United States territory subject to the will of Congress or to pursue a constitutionally viable path towards a permanent non-territorial status with the United States". The Task Force then recommended that, if the voters chose to change the current territorial status, an additional referendum should allow them to decide between statehood and independence. If, on the other hand, the voters elected to maintain the current territorial status, the Task Force recommended that plebiscites be held periodically to "keep Congress informed of the people's wishes".

20. It is important to note that both before and since the issuance of the 2005 Task Force report, some have questioned whether Puerto Rico's status as a United States territory is consistent with statements that the United States made to the United Nations in 1953, following the adoption of Puerto Rico's Constitution, in requesting that Puerto Rico be removed from the list of Non-Self-Governing Territories. In its official request to the United Nations, the United States stated that Congress had given Puerto Rico the freedom to conduct its own internal government subject only to compliance with federal law and the United States Constitution.

21. Prior to the submission of the official request, the United States representative to the United Nations indicated orally that mutual consent would be needed to make changes in the relationship between Puerto Rico and the United States. However, despite that statement, the Department of Justice concluded in 1959 that Puerto Rico remained a territory and held that Puerto Rico remained fully subject to congressional authority under the Territory clause of the United States Constitution. This reality was denounced by then Governor of Puerto Rico Acevedo Vilá, in his statement during hearings of the Special Committee on Puerto Rico in June 2008.

22. In December 2007, the President's Task Force issued its second report on the question of Puerto Rico's status. Again concluding that there were only three options available under the United States Constitution for the future status of Puerto Rico, namely, continuing as a territory, statehood or independence, the Task Force reiterated the three recommendations it had put forward in its 2005 report.

23. Meanwhile, the United States Congress reopened consideration of Puerto Rico's political status in early 2007, as two pieces of draft legislation aimed at resolving the status issue were debated in the Subcommittee on Insular Affairs of the Committee on Natural Resources. In March 2007, hearings took place on the two approaches.

24. The Puerto Rico Democracy Act of 2007 (H.R.900) was introduced in the House of Representatives on 7 February 2007. The bill stated, inter alia, that: "The Puerto Rico State Elections Commission shall conduct a plebiscite in Puerto Rico during the 111th Congress, but not later than 31 December 2009. The ballot shall provide for voters to choose between only the following two options: (1) Puerto Rico should continue the existing form of territorial status as defined by the Constitution, basic laws, and policies of the United States; (2) Puerto Rico should pursue a path toward a constitutionally viable permanent non-territorial status".

25. A second draft bill, the Puerto Rico Self-Determination Act of 2007 (H.R.1230), was introduced in the House of Representatives on 28 February 2007, recognizing the right of the people of Puerto Rico to call a constitutional convention through which the people would exercise their natural right to self-determination and to establish a mechanism for congressional consideration of such decision. The Constitutional Assembly is a procedural mechanism for the decolonization of Puerto Rico, which has gained ground on the island in recent years. As previously reported, this mechanism has been supported by the Puerto Rico Bar Association.

26. On 25 October 2007, after the introduction of an amendment aimed at reconciling the differing approaches, the Puerto Rico Democracy Act of 2007 (H.R.900) was passed in Subcommittee. That bill had not been voted on by the end of the 2007-2008 Congressional session. In May 2009, a new version of the Puerto Rico Democracy Act bill was tabled, entitled "The Puerto Rico Democracy Act of 2009", aimed at providing for "a federally sanctioned self-determination process for the people of Puerto Rico". The bill, if enacted, would provide for referendums to be held in Puerto Rico to determine the island's ultimate political status, giving a choice between retaining the present political status, or choosing a new status. If the first option prevailed, a new referendum would be held again in eight years. If the second option prevailed, another plebiscite would follow, presenting the options of statehood, independence, or independence in free association with the United States. The draft bill was approved by the House Committee on Natural Resources in July 2009 and was placed on the United States Congress's Union Calendar in October 2009.

III. Recent developments

A. Political developments

27. The report contained in document A/AC.109/2008/L.3 gave a detailed account of the situation surrounding former Governor Acevedo Vilá prior to the general election in Puerto Rico held on 4 November 2008. In those elections, Luis Fortuño of PNP won the governorship with 52.9 per cent of the vote. PNP also consolidated its control of the legislature and Pedro Pierluisi, also of PNP, won the office of Resident Commissioner in Washington, D.C.

28. Official data issued by the Puerto Rico Electoral Commission reflect that more than 23 per cent of registered voters did not vote. Including unregistered eligible voters, abstention was 36 per cent, or more than 1 million voters.

29. It is estimated that a significant number of those who voted for PNP did so to punish PPD and in particular Governor Acevedo Vilá, for poor administration and a number of unpopular measures, including a sales tax and a new industrial incentives law. In this regard the election of PNP to the governorship is not viewed as a mandate for the promotion of statehood for Puerto Rico as the fifty-first state of the United States.

30. A link was made at the time between the defeat of the former Governor and criminal charges brought against him and his associates by the United States Government for violations of electoral funds regulations (see A/AC.109/2008/L.3, paras. 20-22). Some political commentators on the island also expressed the view

that charges against Acevedo Vilá were brought for the purpose of damaging his electoral possibilities since he and his party, PPD, had supported adjustments of the Free Associated State status, recognition of the sovereignty of the Puerto Rican people and expansion of the powers of the Free Associated State to several areas now under the plenary powers of the United States Congress. Further, PPD and the former Governor had called for the General Assembly to examine the issue of Puerto Rico. On 20 March 2009, Acevedo Vilá was found not guilty on all counts of corruption that had been brought against him.[4]

31. In July 2005, a vote was held whereby 84 per cent of voters opted in favour of a unicameral legislature for Puerto Rico. Although only 22 per cent of registered voters participated in that referendum, the results triggered a process whereby another referendum was to be held in 2007 to potentially amend Puerto Rico's Constitution and establish a one-house system in 2009. However, on 29 June 2007, the Supreme Court of Puerto Rico ruled that it could not force the Legislative Assembly to initiate a constitutional amendment process to establish a unicameral legislative system.

32. In August 2005, the United States Court of Appeals for the First Circuit, in Boston, upheld the position that citizens of Puerto Rico do not have the right to vote in United States presidential elections. The Court reasoned that Puerto Rico was not a state and it therefore could not have any voting members in the electoral college. The Court has rejected such a claim on three previous occasions. An appeal filed in the United States Supreme Court was turned down in March 2006. Although the Supreme Court action was taken without comment, the United States Government's top Supreme Court lawyer said in a filing that the Appeals Court decision "is amply supported by constitutional text, unbroken tradition and uniform precedent".

33. As described in previous reports, apart from general political questions, three specific issues have been raised before the Special Committee in recent years as resulting from the particular political status of Puerto Rico and its relationship with the United States: (a) the United States military presence in Puerto Rico, particularly on the island of Vieques; (b) the imprisonment in the United States of pro-independence Puerto Ricans accused of seditious conspiracy and weapons possession; and (c) the application of the death penalty to Puerto Ricans convicted on federal charges. In recent years, the issue of increased political persecution has been raised.

34. As in previous reports, the issue of the United States military presence in Puerto Rico will be dealt with in the section on military developments.

35. The issue of the Puerto Ricans accused of seditious conspiracy and weapons possession and imprisoned in the United States for more than 25 years has also been covered in previous reports. In essence, a number of Puerto Rican organizations and political and civil leaders have claimed over the years that these were essentially political prisoners and that they received disproportionately long sentences. In August 1999, President Clinton offered to release the prisoners conditionally, if they formally renounced violence. The offer was accepted by 11 of the original 15 prisoners, while 1 accepted a deal whereby he would be set free in five years. During 2002, 2 more of the original 15 prisoners were released (although 1, Antonio Camacho Negrón, was rearrested in August 2006 by the Federal Bureau of

[4] *The New York Times*, 20 March 2009.

Investigation (FBI)). The two remaining prisoners, Oscar López Rivera and Carlos Alberto Torres, are scheduled to leave prison in 2027 and 2024, respectively. In July 2004, the Human Rights Committee began a campaign to petition President Bush for the release of López Rivera and Torres. Haydée Beltrán, who had been serving an 80-year sentence, elected to pursue her cause separately from the group of 15. According to Puerto Rican media, there is a consensus among the people of Puerto Rico in favour of the release of those imprisoned for cases related to the struggle for the independence of Puerto Rico. In late 2007, the Senate of Puerto Rico adopted a resolution in favour of the release of the prisoners.

36. On 19 January 2010, according to his lawyer, Carlos Alberto Torres attended a video hearing presided over by a United States Parole Commission hearing examiner, whose task was to consider disciplinary charges stemming from January 2009, and to make a recommendation with respect to his request to be released on parole. Mr. Torres answered the questions posed and his attorney asked that the Parole Commission release him on parole as previously recommended, regardless of the wrongful charges. She pointed out the vast ongoing support for his release, and argued that there was absolutely no risk in releasing him, as evidenced by the impressive example of his compatriots who had been released by presidential commutation in 1999. The hearing examiner then made a favourable recommendation. The Parole Commission's decision is pending. A petition campaign to the Parole Commission is being carried out.

37. As previously reported, on 23 September 2005, FBI agents shot and killed Filiberto Ojeda Ríos, one of Puerto Rico's most controversial figures, who in 1976 founded Los Macheteros, more formally known as the Boricua People's Army, an underground paramilitary organization dedicated to freeing Puerto Rico from American colonial rule. Throughout his time with the group, among other actions, Ojeda Ríos was implicated in the 1983 raid on a Wells Fargo depot in West Hartford, Connecticut, from which $7.2 million was stolen. In 1992, he was convicted in absentia and sentenced to 55 years in prison. On 20 September 2005, FBI agents surrounded the house in Hormigueros, Puerto Rico, where Ojeda Ríos was hiding. Ojeda Ríos was injured following a shoot-out on 23 September, a date of historical significance to pro-independence supporters. Autopsy results indicated that he bled to death after being hit by a single bullet. The circumstances of his death stirred controversy and prompted officials in Puerto Rico and the United States, including Governor Acevedo Vilá, Resident Commissioner Fortuño and three Puerto Rican members of the United States Congress, to call for an independent investigation of FBI actions. The overall perception of the death of Ojeda Ríos in Puerto Rico is that he was allowed to bleed to death. The media in Puerto Rico has reported that persecution of independence supporters has increased. Meanwhile, concern continued to be expressed by many sectors of the Puerto Rican population regarding FBI actions in Puerto Rico, which many saw as unfairly targeting pro-independence activists. In August 2006, a report issued by the United States Department of Justice concluded that it "did not find that the FBI violated the deadly force policy or intentionally allowed Ojeda to die, [but] did find deficiencies in the FBI's conduct of the arrest operation". While the report was dismissed by some independence advocates as a cover-up, local reaction to the report was relatively subdued compared to the demonstrations that had erupted across the island in September 2005 when Ojeda Ríos was killed.

38. The Government of Puerto Rico later filed litigation against the Government of the United States in the United States District Court in Puerto Rico regarding its investigation as to the circumstances of his death. The District Court dismissed a petition by the Puerto Rico Department of Justice regarding the cooperation of the FBI. The United States Supreme Court eventually upheld the dismissal.

39. On 10 April 2008, the Government of Puerto Rico, through its Department of Justice, publicly denounced the obstruction of its investigation regarding the circumstances surrounding the death of Filiberto Ojeda Ríos. The Secretary of Justice issued a report and declared the investigation closed due to lack of cooperation from the FBI, which refused to release evidence without which charges could not be brought.

40. On 5 February 2010, independence advocate Avelino González Claudio, who was arrested in March 2008 in connection with the Macheteros investigation, pleaded guilty to federal charges related to his involvement in the above-mentioned raid in Connecticut in 1983.[5]

41. The issue of the application of the death penalty to Puerto Ricans convicted of crimes was described in detail in the 2000 report (A/AC.109/2000/L.3, para. 23). Despite the fact that the death penalty is prohibited in Puerto Rico, the United States Department of Justice has sought the death penalty for Puerto Ricans in a number of cases, resulting in one of the highest death penalty rates per capita of any state or Territory within the United States. The United States District Court for the District of Puerto Rico ruled in 2000 that the death penalty violated the Puerto Rican Constitution, but a year later, the United States Circuit of Appeals in Boston overturned the ruling, holding that Puerto Rico was subject to federal law.

42. Popular opinion in Puerto Rico is strongly against the death penalty and a coalition of religious and community organizations and political leaders have vowed to continue fighting attempts to impose capital punishment on the island. In late January 2008, then Secretary of Justice of Puerto Rico, Roberto Sánchez Ramos, and representatives of the Puerto Rican Coalition against the Death Penalty announced a series of decisions aimed at reducing the number of Puerto Ricans at risk of execution in United States federal cases. The announcement stated that the Puerto Rican Department of Justice had pledged to undertake local, rather than federal, prosecution of cases whenever possible; the Department would transfer cases to a federal court only if it guaranteed that it would not seek the death penalty; it would ask all states requesting the extradition of a suspect for a capital case to "desist", although extradition could be refused; and finally, the then Justice Secretary would write a letter to "express his opposition" every time a Puerto Rican citizen faced the death penalty in another jurisdiction.

43. The former Secretary of Justice of Puerto Rico, Antonio Sagardia, appointed after the 8 November 2008 elections, overturned the policy against the death penalty, declaring that the United States overrode the Constitution of Puerto Rico.

[5] See FBI New Haven. Available from: http://newhaven.fbi.gov/dojpressrel/pressrel10/nh020510a.htm.

B. Military developments

44. As previously reported, for many years Puerto Rico held an important military-strategic position within the United States Naval Forces Southern Command. In addition to its other military operations in Puerto Rico, from 1941 to 1 May 2003 the United States Navy operated on Vieques, an island of just under 10,000 inhabitants located eight miles off the east coast of Puerto Rico. Vieques was used for naval gunfire support, air-to-ground ordnance training and amphibious assault exercises. Details of the military exercises conducted on Vieques during the period that the Navy occupied part of the island and of the related civil disobedience campaigns, arrests and lawsuits are to be found in previous reports of the Special Committee. According to a news release following the cessation of the military operations, the Department of the Navy retained responsibility for the environmental clean-up of the property and would demolish and remove all facilities and structures in the area.

45. Following the withdrawal of the Navy from Vieques, three related issues remained to be clarified: (a) the future development of Vieques and its environmental clean-up; (b) definitive conclusions regarding the effects of the military exercises on the health of Vieques residents; and (c) the future of the Roosevelt Roads Naval Station on the main island of Puerto Rico.

46. Regarding the development of Vieques, in 2002 the Puerto Rican Government announced a four-year plan to invest more than $50 million in the infrastructure and job creation schemes, within the Renacer Viequense programme. In January 2005, the Government of Puerto Rico released a master plan for sustainable development of Vieques and Culebra. The plan called for low-impact development on the islands and recommended that they adopt a policy of encouraging ecotourism, which would emphasize the natural attractions of the islands.

47. There have been reports of speculation regarding land and property in Vieques, and calls have been made for input by locals to be taken into account by entities involved in the clean-up and development of the island.

48. Vieques has been sectioned off for the purpose of the clean-up activities, with a portion of the eastern part transferred to the Fish and Wildlife Service of the Department of the Interior, to be added to the existing Vieques National Wildlife Refuge.

49. On the western portion of Vieques, the Navy operated an ammunition facility until 1948, reactivated in 1962 until its final closure in 2001. Later that year, the Navy transferred 3,100 acres to the Department of the Interior, 4,000 acres to the Municipality of Vieques and 800 acres to the Puerto Rico Conservation Trust. The Navy also managed approximately 14,600 acres on the eastern portion of Vieques, which were used for amphibious training exercises and air-to-ground manoeuvres. This portion of the island included a waste explosive detonation range, which was operated for many years in support of its training activities. Unexploded ordnance and remnants of exploded ordnance, which contain hazardous substances, have been identified there, as well as in the surrounding waters. Military training activities and associated support on the eastern portion of Vieques ceased in 2003, when the Navy transferred that portion to the Department of the Interior.

50. In February 2005, the United States Environmental Protection Agency (EPA) Vieques portion of the proposed Atlantic Fleet Weapons Training Area site was placed on the EPA National Priorities List of the most hazardous waste sites in the country.

51. In March 2008, a federal inter-agency agreement was announced between the United States Environmental Protection Agency, the United States Department of the Navy, the United States Department of the Interior and the Commonwealth of Puerto Rico for the clean-up of portions of Vieques and its surrounding waters. The agreement requires that the environmental impacts associated with past and present activities on Vieques and its surrounding waters be thoroughly investigated and that appropriate actions be taken in order to protect the community and the environment.

52. In its removal of hazardous unexploded munitions from its old training ground, the Navy's practice of detonating them in the open air has alarmed residents. The Environmental Protection Agency said that these on-site detonations were typical of such clean-ups, and posed no threat to human health as long as limited amounts were exploded each time, the wind was calm and air quality was monitored constantly. The Environmental Protection Agency has also indicated that the hazardous substances associated with ordnance that might be present in Vieques included TNT, napalm, depleted uranium, mercury, lead and other chemicals.[6]

53. Culebra Island, located about nine miles north of Vieques, was also part of the United States Navy training facilities. Although military activities ceased on Culebra in 1975 in response to public safety concerns and partly due to legal issues regarding the use of federal funds, clean-up of the island has been slow. In draft legislation proposed by Resident Commissioner Pierluisi in April 2009, he estimated that the Army Corps of Engineers had spent $11,100,000 as at end-2007 on the clean-up of Culebra and estimated that another $92,600,000 would be needed to complete planned clean-up actions. Pointing out that the problems in Vieques and Culebra were similar, he drew a comparison to the $77,600,000 he said the Navy had already spent, and the $253,100,000 the Navy planned to spend in the future to complete the clean-up of Vieques, attributing the difference to the difficulties encountered in securing federal funding for the clean-up in Culebra. His draft bill would repeal the previous legislation that was preventing use of federal funds for Culebra.

54. Regarding the impact on the health of the population of Vieques, in February 2010 CNN reported on its investigation of complaints by residents of Vieques linking their multiple health problems to the United States military presence on the island, and on the attempt by Vieques residents to sue the United States Government, which was reportedly claiming sovereign immunity. The report indicated that the United States Government disputed claims that the Navy's activities on Vieques had made islanders ill by citing a 2003 study by scientists from the Center for Disease Control and Prevention that found no link. The multibillion-dollar lawsuit comprises more than 7,000 Vieques residents, almost three quarters of its population.

55. In the *Sánchez v. United States* lawsuit, Vieques residents are collectively seeking health and property damages in the billions of dollars, claiming that the United States Navy was negligent by exposing Vieques's 10,000-strong population

[6] *The New York Times*, 6 August 2009.

to dangerous levels of toxins for more than 50 years, leading to a cancer rate in Vieques 30 times higher than the rest of Puerto Rico, and other long-term effects.[7]

56. It has also been reported that the United States Agency for Toxic Substances and Disease Registry, mandated to assess health hazards at sites designated for environmental clean-ups, which had also said in 2003 that it found no negative effects on health from the Navy's decades on Vieques, decided in mid-2009 to begin a review of its earlier findings.[8] The Agency announced its decision following a thorough evaluation of its previous public health assessments of 2003 and in light of other environmental studies of the island conducted in the intervening years. The Agency's re-examination of the data comes as part of the "fresh look" that the federal public health agency has pledged to island residents and the United States Congress.

57. Following the decision to launch a new review, the Agency's Director travelled to Vieques in August 2009 and held a dialogue with Vieques residents and scientists from Puerto Rico, and in November 2009 a group of Puerto Rican scientists whose research had contradicted the Agency's original conclusions paid a visit to the Agency's headquarters. According to media reports, the Agency's Director said that much had been learned since the initial study in Vieques, and that gaps had been identified in environmental data that could be important in determining health effects. He later said that the information gaps that had been found indicated that it could not be established without a doubt that there were no health risks in Vieques.

58. The third related issue is the future of the United States' Roosevelt Roads Naval Base, which had been located in Ceiba, Puerto Rico, and was closed as a result of the departure of the United States Navy from Vieques in 2003. According to media reports, Riviera del Caribe, which is part of the Government initiative known as "Portal al Futuro", is the main economic development project for the area formerly occupied by the naval base.[9] Making use of installations of the former base, it would include a mega casino and several other tourism facilities that would have an impact throughout the eastern part of Puerto Rico. However, the project has been immersed in several controversies relating to issues such as the participation of local residents and their organizations, including the Alliance for the Development of Ceiba, in the planning and execution of the plan, benefits for the local community and the tax and regulations devised to make construction of the project competitive.

59. On 22 January 2009, the United States Corps of Engineers announced that it would be granting contracts worth millions of dollars to build modern military facilities in Puerto Rico.[10] Under the Base Realignment and Closing Program, projects will be built in three locations: Fort Buchanan, in the Mayaguez and Ceiba municipalities, at a cost of between $25 million and $50 million. Additionally, a fourth project is already under contract for Fort Allen, which is located in the Juana Díaz municipality. In Caguas a fifth installation is foreseen in 2010 for the Grow the Army Program, at a cost of $15 million.

60. Leaders of anti-military organizations in Puerto Rico, including Wanda Colón Cortés of the Project for Justice and Peace, and Sonia Santiago of Mothers against

[7] Tim Padgett, "Toxic Chemicals at Vieques: Is U.S. Accountable?", *Time*, 16 September 2009.
[8] Robert Rabin, Committee for the Rescue and Development of Vieques, 13 November 2009.
[9] *El Vocero*, 25 August 2009; *Primera Hora*, 10 September 2009.
[10] *El Nuevo Día*, 23 January 2009.

War, have denounced these projects as an expansion of the United States military presence in Puerto Rico.

C. Economic developments

61. Puerto Rico has an industrialized economy with particular characteristics derived from its island geography and close institutional links to the United States. Its estimated per capita gross domestic product (GDP) for 2009 was $17,200, as compared with $17,900 in 2008.[11] Economic performance is closely tied to the United States business cycle, its tax regime and the level of federal transfers.

62. From July to December 2009, the economy of Puerto Rico contracted by 4 per cent, while it is projected that during the fiscal year 2009-2010 economic activity will diminish by 3.5 per cent.

63. Industrialization in Puerto Rico was encouraged by the Industrial Incentives Act of 1954, which granted concessions to United States companies that located plants on the island. In particular, section 936 of the United States Federal Tax Code provided generous tax incentives to such companies, including the right to tax-free repatriation of profits, transforming the economy from a sugar-dominated Caribbean plantation economy to a modern industrialized one. Congress abolished these tax incentives entirely on 31 December 2005.

64. In July 2008, a new economic incentives law was passed to encourage investment in a wider range of activities (e.g. biotechnology and renewable energy). Unlike previous legislation, the economic incentives law does not contain a "sunset clause".

65. Foreign corporations operating in Puerto Rico earned $35 billion in profits in 2009, which represents an increase of $2.5 billion over those generated during 2008.

66. At the beginning of 2010 unemployment stood at 15.7 per cent and participation in the labour forces was 42.9 per cent, representing a reduction of 3.8 per cent as compared with 2008.

67. By early 2010, public debt (the debt of the central Government of Puerto Rico, its municipalities and public corporations) had risen to almost $60.4 billion, as compared with a public debt of almost $58 billion the previous year. During 2009, bankruptcy cases increased by 26.3 per cent (including both business and personal bankruptcy).

68. A report made available on the Puerto Rico Government website on trends and projections for the economy of Puerto Rico,[12] prepared with financial support through a United States federal grant, stated that after a period of significant economic expansion during the 1950s and 1960s (with average annual growth of 5.3 per cent and 7.0 per cent respectively) Puerto Rico's economy had experienced a consistent — though gradual — slowdown for the last four decades. Real average annual economic growth contracted from 3.5 per cent in the 1970s to 2.0 per cent in the 1980s and 2.8 per cent in the 1990s, and was expected to cap 0 per cent during

[11] CIA Factbook. Available from: www.cia.gov; see Puerto Rico (31 March 2010).

[12] "The Economy of Puerto Rico: Trends and Projections for Fiscal Years 2009 and 2020"; available from: www.jp.gobierno.pr.

the present decade. Real growth by decades had experienced declining numbers since the 1970s. In the current decade, only the year 2003 had a growth rate above 2.5 per cent, lower than the previous decade growth average of 2.7 per cent. During that same period, private employment had fallen by 3.9 per cent or 28,416 jobs, while public employment, including all branches of the Government had increased by 2,283 employees. For the fiscal year 2009, the average unemployment rate had reached 13.4 per cent, up by an estimated 2.5 per cent in a year. Meanwhile, private employment had been decreasing consistently over the past three years, indicating a lack of sources of new employment creation.

69. As an austerity measure to reduce Puerto Rico's then $3.2 billion budget deficit and address the issue of high public sector employment, the Government of Puerto Rico began public sector layoffs in May 2009, when 10,400 public employees were laid off. In addition, 7,000 more workers were laid off in October 2009 and a further 2000 in January 2010, bringing the total to almost 20,000 at the time of writing. The stated objective of the Governor of Puerto Rico is to reduce Government spending by $2 billion. The dismissal of Government employees led to a one-day work stoppage by the trade union movement and other organizations on 15 October 2009. Government offices, public schools and universities all over the island were closed as a result, as were the major arteries and a major shopping centre of San Juan.

70. According to the Economist Intelligence Unit, Puerto Rico's recession in the construction industry continued in 2009, underscored by a 25 per cent year-on-year decline in sales of cement in the third quarter of 2009 (compared with a 32 per cent drop in April-June 2009) and a 25.4 per cent year-on-year fall in November 2009.

71. Twenty manufacturing plants closed from July to December 2009 and overall, 83,000 jobs were lost. During this same period of time, exports diminished by 4.5 per cent.

72. Meanwhile, the agricultural sector remains small and is declining. According to official agricultural statistics, Puerto Rico imports 85 per cent of the food its residents consume, owing to lack of ability to compete with the economies of scale of larger agribusiness firms abroad. Further, Puerto Rico reduced its agricultural production by 20 per cent between 2003 and 2008. Puerto Rico's Agriculture Department attributes the drop in production to the high operating costs (such as labour and energy), indicating that, in a time of rising unemployment, agriculture could provide an additional alternative for work. The Department intends to increase training opportunities and encourage modernization in that regard.

73. Puerto Rico's services sector has grown in importance in recent years, with tourism a main component. It is estimated that for every 100 hotel jobs, there are an additional 178 jobs in related activities. Published figures indicate that around 4.5 per cent of the workforce is employed in the sector. After a decade of steady growth in the tourism sector, there were signs in 2007 and 2008 that the global economic slowdown was having an effect. However, after a decline in the first half of 2009, the number of foreign tourists registered in hotels in the third quarter of 2009 increased by 2.6 per cent year on year, an improvement from the drastic 9.4 per cent and 1.8 per cent decline in the first and second quarter, respectively. Similarly, the occupancy rate in hotels rose by an average of 5.4 per cent in the third quarter, compared with a 6 per cent fall in the earlier two quarters.

74. The most exhaustive study of the Puerto Rican economy done in the past 75 years, entitled "Economy of Puerto Rico: restoring growth",[13] was jointly conducted by the Center for the New Economy in San Juan and Brookings Institution Press in Washington, D.C., in 2005. It examined the island's economic performance from its post-Second World War boom through its stagnation in the past 25 years, including the island's low employment rates, comparatively small private sector, trade performance and the effectiveness of its educational, financial and fiscal systems. The study concluded that reviving growth would require increasing the proportion of Puerto Ricans who are working, both through enhancing incentives to seek employment and through expanding private sector job opportunities.

IV. Previous action taken by the United Nations

A. General

75. Since 1953, the United States has maintained a consistent position regarding the status of Puerto Rico and the competence of United Nations organs to examine that status, based on General Assembly resolution 748 (VIII) of 27 November 1953, by which the Assembly released the United States from its obligations under Chapter XI of the Charter of the United Nations. It has maintained that Puerto Rico has exercised its right to self-determination, has attained a full measure of self-government, has decided freely and democratically to enter into a free association with the United States and is, therefore beyond the purview of United Nations consideration. The Puerto Rican forces in favour of decolonization and independence have contested this affirmation. In paragraph 9 of the resolution 748 (VIII), the General Assembly expressed its assurance that due regard would be paid in the eventuality that either of the parties to the mutually agreed association might desire any change in the terms of that association.

76. Information on action taken by United Nations bodies with respect to Puerto Rico prior to 1974 is contained in the 1973 report of the Rapporteur (A/AC.109/L.976). Information since then can be found as follows: A/AC.109/L.1191 and Add.1 (for 1974-1976); A/AC.109/L.1334 and Add.1-3 (for 1977 and 1978); A/AC.109/L.1436 (for 1979-1981); A/AC.109/L.1572 (for 1981-1985); A/AC.109/1999/L.13 (for 1984-1998); A/AC.109/2000/L.3 (for 1999); A/AC.109/2001/L.3 (for 2000); A/AC.109/2002/L.4 (for 2001); A/AC.109/2003/L.3 (for 2002); A/AC.109/2004/L.3 (for 2003); A/AC.109/2005/L.3 (for 2004); A/AC.109/2006/L.3 (for 2005); A/AC.109/2007/L.3 (for 2006); A/AC.109/2008/L.3 (for 2007); and A/AC.109/2009/L.13 (for 2008).

B. Action taken by the Special Committee

77. At its 1st meeting, on 26 February 2009, by adopting the suggestions relating to the organization of work put forward by the Chairman (see A/AC.109/2009/L.2), the Special Committee decided to take up the item entitled "Special Committee

[13] S. M. Collins, B. P. Bosworth and M. A. Soto-Class, editors.

decision of 9 June 2008 concerning Puerto Rico" and to consider it at plenary meetings.

78. At the 3rd meeting, on 8 June 2009, the Chairman of the Special Committee drew attention to a number of communications received from organizations requesting to be heard on Puerto Rico by the Committee. The Special Committee agreed to accede to those requests and heard a number of representatives of the organizations concerned at its 5th and 6th meetings (see A/AC.109/2009/SR.5 and 6).

79. At the 5th meeting, on 15 June 2009 the representative of Cuba introduced draft resolution A/AC.109/2009/L.7.

80. At its 6th meeting, on 15 June, following statements by Dominica (on behalf of the States Members of the United Nations that are members of the Movement of Non-Aligned Countries), the Plurinational State of Bolivia, Ecuador, the Islamic Republic of Iran, Nicaragua, Panama, Saint Vincent and the Grenadines, the Syrian Arab Republic and the Bolivarian Republic of Venezuela (see A/AC.109/2009/SR.6), the Special Committee adopted draft resolution A/AC.109/2009/L.7 without a vote. At the same meeting, a statement was made by the representative of Cuba.

C. Action taken by the General Assembly

81. During the sixty-fourth session of the General Assembly, no draft resolution on this issue was submitted to the Assembly for action.